

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

MELISSA ALEXANDER,

Plaintiff,

v.

AMERICAN UNITED LIFE INSURANCE)
COMPANY,)

Defendant.)
_____)

Civil Action No. 8:07-cv-2449-RBH

JOINT STIPULATION

1. The parties hereby stipulate that this matter involves a claim for benefits under the terms of a group disability insurance contract issued by Defendant under the terms of an employee welfare benefit plan governed by the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), pursuant to 29 U.S.C. § 1132(a)(1)(B), and attorney's fees, pursuant to 29 U.S.C. § 1132(g).

2. The parties hereby stipulate that Plaintiff has exhausted all administrative remedies required with respect to the benefits sought in this action.

3. The parties agree that the applicable standard of review is *de novo*.

4. The parties agree that the current administrative record is attached hereto as part of Exhibit 1, Bates pp. 00030-01025.

5. The parties agree that the applicable group disability insurance contract is attached as a part of Exhibit 1, Bates pp. 00001-00029.

6. The parties stipulate that the Court should consider the following provisions of the group disability insurance contract in resolving this matter:

MENTAL ILLNESS LIMITATION: Monthly Benefits for Disability due to Mental Illness will not be payable beyond the Maximum Benefit Duration. In addition, if the Maximum Benefit Duration is longer than 24 months, benefits for Disability due to Mental Illness will not exceed 24 months of Monthly Benefit payments unless:

1. the Person is in a hospital or institution at the end of the 24 month period; and
2. confinement begins:
 - a. during the Elimination Period; or
 - b. during the 24 months next following the Elimination Period; and
3. confinement is for at least 14 consecutive days.

The Monthly Benefit will be payable until the Person is discharged. If Disability continues after discharge, the Monthly Benefit will be payable for a recovery period not to exceed 90 days.

If the Person is reconfined in a hospital or institution for the same Sickness or Injury which caused the Disability, the Monthly Benefit will be payable during the reconfinement if:

1. it begins during the recovery period; and
2. it is for at least 14 consecutive days.

If Disability continues after the Person is discharged from this reconfinement, the Monthly Benefit will be payable for a final recovery period not to exceed 90 days.

For any period of confinement beyond those stated above, the Monthly Benefit will continue to be payable

1. only if confinement is for at least 14 consecutive days; and
2. only until the Person is discharged; and
3. only if the Person is continuously Totally Disabled.

To be covered, confinement must be in a facility licensed to provide care and treatment for the disabling condition due to Mental Illness.

See Bates p. 00028.

TOTAL DISABILITY and TOTALLY DISABLED mean that because of Injury or Sickness:

1. the Person cannot perform the material and substantial duties of his regular occupation; and
2. after benefits have been paid for 2 years, the Person cannot perform the material and substantial duties of any gainful occupation for which Person is reasonably fitted by training, education or experience.

See Bates p. 00010.

The parties disagree as to whether the following terms of the group disability insurance contract should be considered by the Court in resolving this matter. Plaintiff contends the following provisions are not relevant. However, Defendant contends the following provisions are relevant and must be considered by the Court.

GROSS MONTHLY BENEFIT means the Person's Monthly Benefit before any reduction for Other Income Benefits and earnings.

See Bates p. 00006.

MONTHLY BENEFIT means the amount payable monthly by AUL to the Disabled Person. This is the amount stated in the Schedule of Benefits less Other Income Benefits.

See Bates p. 00007.

REDUCTIONS TO THE MONTHLY BENEFIT: The Monthly Benefit will be reduced by Other Income Benefits as defined in this certificate. The Social Security Integration Method used is stated in the Schedule of Benefits.

See Bates p. 00021.

OTHER INCOME BENEFITS means those benefits which the Person, and/or his spouse, Child or Children are entitled to receive as indicated below. These Other Income Benefits, except for retirement benefits, are benefits resulting from the same Disability for which a Monthly Benefit is payable under the Group Policy.

Other Income Benefits are:

1. any amount provided to the Person under:
 - a. any Worker's or Workmen's Compensation Law;
 - b. Occupational Disease Law; or
 - c. any other similar act or law.
2. any disability income benefits provided to the Person under any Compulsory Benefit Act or Law.
3. any disability income benefits for which the Person is eligible under any other group insurance plan of any employer.
4. any disability or retirement benefits received by the Person under any Employer's Retirement Plan as follows:
 - a. Disability benefits included are amounts which:
 - 1) are payable under a retirement plan due to disability as defined in that plan; and
 - 2) do not reduce the amount of money which would have been paid as retirement benefits at the normal retirement age under the plan if the disability had not occurred. (If the payment does cause such a reduction, it will be deemed a retirement benefit as defined in the Group Policy.)
 - b. Retirement benefits included are amounts which:
 - 1) are payable under a retirement plan either in a lump sum or in the form of periodic payments;
 - 2) do not represent contributions made by the Person; and
 - 3) are payable upon:
 - a) early or normal retirement; or
 - b) disability, if the payment does reduce the amount of money which would have been paid at the normal retirement age under the plan if the disability had not occurred.

Only the portion that is not funded by the Person's contributions will be considered a retirement plan benefit.

5. any amount of disability or retirement benefits payable under the United States Social Security Act. This will be based on Family Social Security Benefits as stated in the Schedule of Benefits.
6. any amount of disability or retirement benefits under:
 - a. the Railroad Retirement Act;
 - b. any other similar act or law provided in any jurisdiction.

See Bates pp. 00007-00008.

APPLICATION FOR OTHER INCOME BENEFITS: If the Person, spouse or Child(ren) are or become eligible for any Other Income Benefit, they must:

1. apply for the Other Income Benefits; and
2. appeal any denial for the Other Income Benefit that appears unreasonable.

Until approval or denial above is made of any disability or retirement benefit under the United States Social Security Act, AUL will make payments under either Method A or B below as chosen by the Person in a written agreement provided by AUL.

Method A: AUL will estimate the amount of the Social Security benefit that will be received and reduce the regular Monthly Benefit by this amount. If the Social Security benefits are estimated, the Person's regular Monthly Benefit will be adjusted when AUL receives proof of the amount awarded or that benefits have been denied. If the application is denied, the amount withheld based upon estimates will be returned to the Person in a lump sum. During subsequent appeals of denial of benefits Method B will be used.

Method B: AUL will pay the regular Monthly Benefit after the Elimination Period with no reduction for estimated benefits until Social Security reaches a decision. When a decision is reached, the Person must send AUL a copy of the decision and reimburse AUL for any overpayment made as a result of that decision, regardless of whether or not the coverage is still in force on the date the Person recovers such amount. Additionally, if an award is

made, AUL will reduce the Monthly Benefit by the amount of Social Security Benefit the Person received, in accordance with the terms of the Group Policy. If the Person chooses this Method B and has not applied for Social Security to which he may be entitled, the Person must agree to apply for such benefits immediately. If the Person does not apply for Social Security benefits immediately, AUL will automatically use Method A.

If the Person is eligible for any Other Income Benefits, except those provided by the United States Social Security Act, the right to elect Method A or Method B shall not be available to the Person.

See Bates p. 22.

The parties reserve the right to address other contract terms in their briefs.

7. The parties stipulate that the substantive issues the Court should decide are: Defendant determined Plaintiff was not entitled to long-term disability benefits based on two grounds: (1) that her claim was subject to a 24-month maximum benefit duration applicable to mental illness and Plaintiff had already been paid the maximum amount of benefits during the maximum benefit duration; and (2) Plaintiff was neither totally disabled nor entitled to further benefits under the group disability insurance contract beyond September 14, 2006. The Court must determine whether Defendant's decision to terminate benefits on these grounds was correct.

(a) Defendant contends that if Plaintiff is found to be entitled to long-term disability benefits, any award of benefits (retroactive or prospective) under the group disability insurance contract is subject to reduction following receipt of Other Income Benefits and that Plaintiff is obligated to reimburse Defendant following receipt of any Other Income Benefits, even if such receipt is made after judgment is entered in this case. The Court must decide the effect of any receipt of Other Income Benefits on any award of benefits (retroactive or prospective) under the group disability insurance contract. Plaintiff contends that the issues

raised by this paragraph 7(a) are neither ripe for decision nor properly before the Court at this time.

8. The parties stipulate that the Court may dispose of this matter based upon this Joint Stipulation, the attachments hereto, and the Memoranda in Support of Judgment.

Dated this 6th day of March, 2008.

WE SO AGREE AND STIPULATE:

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